

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

Case No. 03-16

+ + + + +

Thursday
January 29, 2004

+ + + + +

The Public Hearing of Case No. 03-16 by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, Northwest, Washington, D.C., Anthony J. Hood, Vice Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Vice Chairperson
KEVIN L. HILDEBRAND	Commissioner
(Architect of the Capitol)	
JOHN G. PARSONS	Commissioner
(National Park Service)	

OFFICE OF ZONING STAFF PRESENT:

Alberto P. Bastida,	Secretary, ZC
Sharon Schellin,	Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

Joel Lawson,	Office of Planning
Jennifer Steingasser,	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Sherry Glazer, Esq.

P-R-O-C-E-E-D-I-N-G-S

6:40 p.m.

VICE CHAIRPERSON HOOD: Good evening ladies and gentlemen. This is the Public Hearing of the Zoning Commission of the District of Columbia for Thursday, January 29, 2004.

My name is not Carol Mitten. My name is Anthony Hood. I'm the vice chairman, and I'm joined tonight by Commissioners John Parsons, and also our new commissioner Kevin L. Hildebrand. I believe I pronounced that correctly.

COMMISSIONER HILDEBRAND: That's very close. It's Hildebrand.

VICE CHAIRPERSON HOOD: Hildebrand, excuse me, who is our new commissioner. And I'd like to welcome him to the commission. He's representing the Architect of the Capitol.

COMMISSIONER HILDEBRAND: Thank you very much, Mr. Chairman.

VICE CHAIRPERSON HOOD: The subject of this evening's hearing is Zoning Commission Case Number 03-16. This is a request of BRE/Watergate LLC for approval of modification to an approved planned unit development for property located at 2650 Virginia Avenue, and known as Lot 807 of Square 8.

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1 Notice of today's hearing was published in
2 the D.C Register on November 14, 2003. The hearing
3 will be conducted in accordance with provisions of 11
4 DCMR 3022. Copies of today's hearing announcements
5 are available to you, and are located to my left on
6 the wall bin near the door.

7 Please be advised that this proceeding is
8 being recorded by a court reporter, and is also
9 webcast live. Accordingly, we must ask you to refrain
10 from any disruptive noises or actions in the hearing
11 room.

12 When presenting information to the
13 commission, please turn on and speak into the
14 microphone, first stating your name and home address.

15 When you are finished speaking, please turn your
16 microphone off so that your microphone is no longer
17 picking up sound or background noise.

18 The order of procedure will be as follows:
19 preliminary matters, applicant's case, report of the
20 Office of Planning, report of other government
21 agencies, if any, report of Advisory Neighborhood
22 Commission 2A, organizations and persons in support,
23 organizations and persons in opposition.

24 The following time constraints will be
25 maintained in this meeting: the applicant 40 minutes,

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1 organizations five minutes, individuals three minutes.

2 The commission intends to adhere to the time limits
3 as strictly as possible in order to hear the case in a
4 reasonable period of time. The commission reserves
5 the right to change the time limits for presentations,
6 if necessary, and notes that no time shall be ceded.

7 All persons appearing before the
8 commission are to fill out two witness cards. These
9 cards are located to my left on the table near the
10 door. Upon coming forward to speak to the commission,
11 please give both cards to the reporter sitting to my
12 right.

13 The decision of the commission in this
14 case must be based exclusively on the public record.
15 To avoid any appearance to the contrary, the
16 commission requests that persons present not engage
17 the members of the commission in conversations during
18 any recess or at any time. The staff will be
19 available throughout the hearing to discuss procedural
20 questions.

21 Please turn off all beepers and cell
22 phones at this time so as not to disrupt these
23 proceedings. At this time, the commission will
24 consider any preliminary matters. Does the staff have
25 any preliminary matters?

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1 MR. BASTIDA: Mister Chairman, yes. The
2 staff has one preliminary matter regarding the posting
3 and maintenance of the posting of the site, and the
4 applicant has complied with all the requirements of
5 this regulation.

6 In addition, I believe that Mr. Hildebrand
7 has a preliminary matter that he would like to express
8 at this time. Thank you.

9 COMMISSIONER HILDEBRAND: Yes, Mr.
10 Chairman, I'd like to acknowledge for the record that
11 I am a friend of a person who will be presenting here
12 as a witness tonight. Bill Condrell and his wife
13 Stacey are friends of mine. I don't think that that
14 will in any way bias my opinion on the case, however.

15 VICE CHAIRPERSON HOOD: On your first
16 night now on this commission.

17 (Laughter.)

18 VICE CHAIRPERSON HOOD: I guess I would
19 have to -- okay. I don't have any problems.

20 MR. KASS: Mister Chairman, I am Ben Kass,
21 and I'm counsel for Watergate East. And I'd like to
22 raise a preliminary matter.

23 VICE CHAIRPERSON HOOD: Let me ask you, is
24 that pertaining to Mr. Hildebrand's disclosure?

25 MR. KASS: No.

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1 VICE CHAIRPERSON HOOD: Okay, well we're
2 not there yet.

3 MR. KASS: I thought you were asking for
4 other preliminary matters.

5 VICE CHAIRPERSON HOOD: No, we're not
6 there yet. Let me take care of this issue and then
7 we'll move on.

8 Mister Bastida, help me. I think I'm
9 supposed to ask the applicant is it an issue? Oh, we
10 don't have any parties. Okay. So that's not an
11 issue. Just the applicant, I believe.

12 Does anyone have any concern?

13 (No response.)

14 VICE CHAIRPERSON HOOD: Hearing none,
15 we'll move forward.

16 The ANC is already an automatic party. Do
17 you have a concern with what was just disclosed, Mrs.
18 Miller?

19 MS. MILLER: My name is Dorothy Miller and
20 I'm chair of ANC-2A. And my concern is that the
21 gentleman who is new, and I have not met yet, don't
22 know anything about him yet, but anyway, the person
23 you're a friend of heads the tenant's group for the
24 Watergate East. And that's where a lot of the
25 contention has laid. So I don't know how that's going

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1 to affect your consideration of the case, or your
2 hearing of the case, but I do have some concerns about
3 it. Because that has been the big disruptive
4 question.

5 COMMISSIONER HILDEBRAND: I can appreciate
6 that, and maybe I can clarify a little bit further.
7 Bill's wife and I worked together for a number of
8 years at Arthur Cotton Moore Associates, and we have
9 been friends since that time. However, we're not
10 close personal friends, and I have not seen them
11 socially in a number of years.

12 MS. MILLER: Okay, because this has been
13 very contentious.

14 VICE CHAIRPERSON HOOD: Ms. Miller, would
15 you have any objection if we move forward? You don't
16 have any objection for us moving forward?

17 MS. MILLER: Not at all.

18 VICE CHAIRPERSON HOOD: Okay, thank you.
19 Could you turn that mic off for me, please?

20 MS. MILLER: Absolutely.

21 VICE CHAIRPERSON HOOD: Okay, thank you.
22 Okay, hearing none we will go ahead and move forward.

23 Would all individuals wishing to testify
24 please rise to take the oath? Ms. Schellin, would you
25 please administer the oath?

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1 MS. SCHELLIN: Yes.

2 (Whereupon, the witnesses were sworn.)

3 VICE CHAIRPERSON HOOD: Okay, I'm going to
4 ask anyone else if they have a preliminary matter
5 please come to the table. Mister Kass?

6 MR. KASS: Thank you Mr. Chairman. I am,
7 as I indicated, Benny Kass, and I'm special counsel to
8 Watergate East. Watergate East's position is in
9 opposition to the application. However, just this
10 afternoon, and if I could hand copies, a lawsuit was
11 filed. The board of directors initially voted 6 - 5
12 against this application. Four of the five dissenting
13 board members filed a suit in the Chancery Court of
14 Delaware asking basically for declaratory judgment to
15 challenge the vote and the decision on the part of the
16 membership of WEI and the board of WEI, Watergate
17 East, as to whether the vote did or did not pass,
18 whether the vote was or was not in support or opposed
19 to the application.

20 We believe strongly that they will not
21 succeed. But because the matter is now in the court
22 of chancery, and because the Office of Planning has
23 already indicated in their report that they're
24 anxiously awaiting the response from the various
25 Watergates that are affected, South, West, and East,

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1 and because we feel that it would be important to tell
2 this commission exactly what our position is without
3 having a challenge or a lawsuit hanging over our head,
4 we respectfully move that this zoning hearing be
5 postponed until such time as the chancery court rules
6 on this motion.

7 At the present time, it is our position
8 that we are opposed to it, to the application, but
9 because of this cloud hanging over our head, the
10 court, we feel it would be appropriate and fair to
11 postpone the hearing until such time as the court
12 rules.

13 VICE CHAIRPERSON HOOD: Mister Kass, I
14 want you to walk me back through this. I have a
15 letter here dated January 5 where Watergate East is in
16 opposition. Now what happened. Again, after that
17 there was a vote taken.

18 MR. KASS: I'll walk you through it very
19 carefully.

20 VICE CHAIRPERSON HOOD: Slowly, so I can
21 understand what's going on.

22 MR. KASS: On January 15, because we had
23 to meet our deadline to tell the commission whether we
24 were opposed or in support of it, we asked for party
25 status in opposition to the application. We did have

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1 a caveat in our application that there was going to be
2 a membership meeting on January 22 to vote whether or
3 not to support or oppose the application. That vote
4 was taken. It is our position based on the board's
5 requirements, and on what we believe is Delaware law,
6 as a Delaware corporation, that the membership voted
7 not to support the application. So therefore we are
8 not changing our position.

9 However, there are those in the community
10 of Watergate East who believe that our legal position
11 is wrong, and that under Delaware law the vote that
12 was taken was sufficient to support the plan. The
13 board takes the position otherwise. They have now
14 filed a suit in court to challenge our position.

15 Over-simplified, the board's position was
16 that 75 percent of the membership have to vote in
17 favor so that we would go forward and support the
18 application. We didn't get 75 percent. Those who
19 take the position in the chancery court are taking the
20 position that all that is needed is a majority of
21 those present in person or by proxy at a meeting.
22 There is a third, another legal position that it
23 takes, under Delaware law, a majority of all of the
24 membership, not just those who are at a meeting. This
25 is the legal issue that is in dispute.

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1 If the plaintiffs are successful in their
2 lawsuit, it probably will change the position of
3 Watergate East. If the plaintiffs are not successful,
4 then Watergate East's position will remain in
5 opposition. Mister Condrell, the president, when we
6 get an -- if we don't postpone the hearing will go
7 into this in more detail, as I will later on.

8 But my point is, at the present time
9 because of the lawsuit challenging the validity of our
10 position before this zoning commission, we believe
11 that it is improper, unfair, for the hearing to
12 proceed while there's a court matter pending which may
13 or may not change our position.

14 VICE CHAIRPERSON HOOD: And this whole
15 court matter issue transpired sometime today?

16 MR. KASS: The suit was filed this
17 afternoon.

18 VICE CHAIRPERSON HOOD: Okay.

19 COMMISSIONER PARSONS: Mister Kass, in
20 your experience, and I know it's like playing the
21 lottery, but how long will it take the court to deal
22 with this matter?

23 MR. KASS: According to one of the persons
24 who told me from his experience, it may take three or
25 four weeks. It's a declaratory judgment. I don't

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1 know. I have no experience with the Delaware courts.
2 If they're anything like the Superior Court here it
3 can take months.

4 COMMISSIONER PARSONS: That's my concern.

5 MR. KASS: They were -- I was told by
6 people who've been in touch with the law firm that
7 filed the suit that this can be resolved fairly
8 expeditiously. I can't make any representations one
9 way or another.

10 COMMISSIONER PARSONS: So you have no
11 definition of "fairly expeditiously"?

12 MR. KASS: I have no --

13 COMMISSIONER PARSONS: Delaware speak?

14 MR. KASS: No, no, sir. I wish I did. We
15 would like to get this over with as fast as possible,
16 and we will certainly move to expedite it as soon as
17 possible, as will the --

18 COMMISSIONER PARSONS: I'm a little bit
19 confused. Are there two votes that occur, a vote of
20 the participants in a meeting, and then the board
21 votes in a separate fashion?

22 MR. KASS: No. The board voted 6 - 5 in
23 opposition to the monument's proposal. But the board
24 also realized that it did not have the authority on
25 its own. So they had and called for a meeting on

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1 January 22 of the entire membership. The board, by a
2 vote of 6 - 5, set the parameters that it would take
3 75 percent of the membership in order to support --
4 voting positively in order to support the monument
5 proposal. This was based on a provision in the bylaws
6 that requires for certain circumstances, and I can go
7 into details, but --

8 COMMISSIONER PARSONS: I'm trying to get
9 how they determine 75 percent of the vote. Is that
10 done by paper ballots, show of hands at a meeting?

11 MR. KASS: That was done by paper ballots.

12 COMMISSIONER PARSONS: And you didn't get
13 enough.

14 MR. KASS: We did not even get a majority
15 of the membership to support the program.

16 COMMISSIONER PARSONS: Okay.

17 MR. KASS: So that, forget the 75 percent
18 for a moment, if you take the view that the plaintiffs
19 are taking, that it takes only 50 plus percent of
20 those present in person or by proxy, yes they had that
21 vote. But if it takes 50 percent of the entire
22 membership, which many of us maintain is the
23 democratic way in the Delaware requirements, then they
24 did not have that percentage vote.

25 COMMISSIONER PARSONS: And this paper

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1 ballot is cast at the meeting?

2 MR. KASS: This paper ballot was cast at
3 the meeting. And not myself, but the other lawyer for
4 the Watergate co-op, I believe, or the management, I'm
5 not sure, actually has the ballots because I directed
6 that we keep these ballots.

7 COMMISSIONER PARSONS: So there's no
8 solicitation to everybody in the cooperative to proxy
9 their votes in, or it's all done in a meeting context?

10 MR. KASS: Those solicitations were made
11 in advance of the January 22 meeting. And not
12 everybody showed up. A lot of people voted yes or no
13 by proxy. And so what I'm saying is that of the total
14 number of votes, there was not a majority of the
15 entire membership in person or by proxy.

16 COMMISSIONER PARSONS: Oh, now I
17 understand.

18 MR. KASS: And that is the lawsuit that is
19 being challenged. It literally was filed, we just got
20 it this afternoon. And this clouds our honest ability
21 to tell you Watergate East is opposed to it or
22 supports it, depending on what the court tells us to
23 do. And for this reason, I know the Office of
24 Planning has indicated they want to know what all of
25 the Watergate positions are, and at this point we can

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1 tell you what we believe our position is. We believe
2 -- we will tell you what the board's majority position
3 is, as well as the membership position right now, but
4 that is subject to challenge and subject to change.
5 And that I don't think would be fair to this
6 commission.

7 COMMISSIONER HILDEBRAND: Mister Kass,
8 what percentage are you missing from having cast no
9 vote or proxy?

10 MR. KASS: Can I get my numbers?

11 COMMISSIONER HILDEBRAND: Sure.

12 VICE CHAIRPERSON HOOD: While we're
13 waiting on that, let me just say for the record I
14 omitted to say that we possibly may be joined by the
15 chairperson, Chair Mitten. She can't get here fast
16 enough.

17 (Laughter.)

18 MR. KASS: The vote -- this is a Delaware
19 corporation, and it goes on a percentage of votes of
20 shares, not on one person or one man, one unit vote.
21 So it's a percentage. The total percentage required,
22 total membership percentage is -- if I could give you
23 our testimony, I have this written down right there,
24 or I can just read it to you.

25 VICE CHAIRPERSON HOOD: I don't think we

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1 want to get into the merits of the case.

2 MR. KASS: The answer to your question --

3 COMMISSIONER HILDEBRAND: That's what I'm
4 getting at is how difficult would it be to get an
5 opinion from the people who have not yet cast an
6 opinion in this vote. And get the opinion of the
7 entire building. Will that take less time than the
8 court route?

9 MR. KASS: That might take less time.
10 That's certainly a possibility. But there's a total
11 of 73,837 shares. Only 45.27 percent voted. No, I'm
12 sorry. 45.27 percent voted to support the program, to
13 support monument. But that wasn't a majority. Now
14 could we go back --

15 COMMISSIONER HILDEBRAND: That wasn't my
16 question.

17 MR. KASS: I thought you said go back and
18 have another.

19 COMMISSIONER HILDEBRAND: I'm sorry. You
20 said 42 or 47 percent?

21 MR. KASS: 45.27 percent voted in favor of
22 the --

23 COMMISSIONER HILDEBRAND: And how many
24 people voted against?

25 MR. KASS: 28,535 voted against, shares.

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1 In terms of people --

2 COMMISSIONER HILDEBRAND: And what is that
3 total, if you add those two together?

4 MR. KASS: I didn't do the total. It's
5 certainly less than the 45 that voted in favor. But
6 if you look at units, we just did an audit of that, of
7 the units involved 101 units voted no, and -- I'm
8 sorry -- yes, 101 voted no, and 100 voted yes. So
9 based on just one unit one vote, that was --

10 MR. GLASGOW: Mister Chairman, I need to
11 interpose an objection at this point in time. This is
12 a land use case. The court's going to decide whatever
13 it decides on this, and the record can be held open
14 for Watergate East's position. We're ready to move
15 forward with our land use case.

16 VICE CHAIRPERSON HOOD: I want to make
17 sure, Mr. Glasgow, that my colleague has satisfied his
18 inquiry.

19 COMMISSIONER HILDEBRAND: I think I've
20 gotten the information that I was looking for.

21 COMMISSIONER PARSONS: Well, I want to
22 push on with the same thing. Not to start to replace
23 the court in Delaware with our proceedings. I think
24 that's Mr. Glasgow's concern. But why isn't it the
25 common sense thing to do to go back and start over

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1 again and get this thing done right, rather than fight
2 this out in some court in Delaware? I mean, you've
3 obviously got a very split community. Why don't you
4 have another public forum and debate it some more, and
5 come back with a more ?

6 MR. KASS: I can't speak for my clients,
7 but we are faced with a hearing today.

8 COMMISSIONER PARSONS: I understand that.

9 MR. KASS: If you postpone the hearing for
10 --

11 COMMISSIONER PARSONS: Postpone it based
12 on some court that we don't know anything about is
13 what my problem is. I find your argument persuasive,
14 but not we're going to go up to Delaware and fight
15 this out. You ought to get your community together,
16 your organization, and come up with a firm position,
17 and let that ride in a different way.

18 MR. KASS: I cannot speak for the board,
19 but the president has nodded that he would certainly
20 support this in lieu of who knows how long it's going
21 to be. So if we can postpone this for two months, we
22 will have a meeting.

23 COMMISSIONER PARSONS: No, I'm talking a
24 week here.

25 MR. KASS: Well, we have to give 10 days

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1 notice to our membership.

2 COMMISSIONER PARSONS: You don't want to
3 get sued again?

4 MR. KASS: We can't, that's true. We
5 can't even hold a meeting unless we give them 10 days
6 notice.

7 COMMISSIONER PARSONS: All right.

8 MR. KASS: A month would be fine.

9 COMMISSIONER PARSONS: I don't know, Mr.
10 Chairman, I mean how are we going to have a productive
11 hearing with one of the parties not knowing which way
12 he's going?

13 VICE CHAIRPERSON HOOD: I would agree.
14 But I would like to ask, because I was thinking maybe
15 we could hear the applicant's case, but maybe that
16 won't be beneficial either, especially since that may
17 put someone at a disadvantage if they are granted
18 party status. Because they don't have party status
19 yet.

20 Let me ask Ms. Glazer. Let me see how I
21 can phrase this. Is there -- if we were to proceed,
22 from a legal standpoint, with Watergate East, which
23 this was just brought to us about something being in
24 court, would that be an issue to affect us from
25 proceeding here tonight? Do you think that's a

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1 substantial issue enough for us not to proceed?

2 MS. GLAZER: In my view, I don't think
3 there is any legal impediment to proceeding tonight.
4 But primarily the first issue to be decided would
5 still be who's granted party status. Assuming
6 Watergate East is granted party status, they would
7 present their views, and their testimony would be
8 given the weight that's appropriate, given the fact
9 that there is some controversy about their position.

10 VICE CHAIRPERSON HOOD: I think that may
11 put them in a rather unusual position.

12 COMMISSIONER PARSONS: You know, there may
13 be some value to hearing the applicant's case because
14 what I've learned over time is a lot of people here in
15 this room really don't know exactly what the proposal
16 is, and would benefit from a presentation. Now maybe
17 I'm wrong, but a lot of people get whipped up in
18 opposition to something because their neighbors
19 suggested it, and they really don't know what it's --
20 what the proposal specifically is. And I may be off
21 base, but there would be no harm in us proceeding with
22 a presentation for one hour of the case, and saving
23 cross examination and that kind of thing for a time
24 certain two or three weeks from now.

25 We can allow them to come in as a party

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1 and they'll just say they're a party in opposition,
2 because they don't know which to be.

3 VICE CHAIRPERSON HOOD: And that was my
4 point.

5 COMMISSIONER PARSONS: But I would just
6 grant them party status. We're going to do that
7 anyway. They certainly can be a party to this case,
8 it's just that they can't declare which way they're
9 going.

10 VICE CHAIRPERSON HOOD: In opposition or -
11 -

12 COMMISSIONER PARSONS: Right.

13 VICE CHAIRPERSON HOOD: It's always
14 something different down here.

15 MR. KASS: Mister Chairman, may I add one
16 other comment?

17 VICE CHAIRPERSON HOOD: Sure, and then I
18 think we're going to cut it off.

19 MR. KASS: I understand. Our position
20 right now because there is no stay, because there is
21 no temporary restraining order, is that we are --
22 Watergate East is in opposition. But I think what is
23 important is it is our understanding, and maybe this
24 can come out in cross examination or examination, that
25 monument needs the parking spaces that Watergate East

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1 has, and that part of the deal was whether we sell
2 them or we don't sell them the parking spaces, so they
3 may have enough sufficient parking spaces to be able
4 to sell their luxury cooperative units.

5 And so that's why we our stymied. Right
6 now our position is no. And if our position is no, I
7 don't know how the commission can make a decision on
8 the parking when you and we don't know whether they
9 will get it or not.

10 VICE CHAIRPERSON HOOD: Okay, here's where
11 we are. You've heard my colleague. If we move
12 forward, and I want to throw this out to my colleagues
13 and let's discuss this. Do we want to hear the
14 applicant's case tonight, or do we want to wait? Or
15 what do we want to do?

16 COMMISSIONER PARSONS: I would like to
17 hear from Mr. Glasgow. I'd like to hear some debate
18 about this. Mister Glasgow has just said he wants to
19 proceed with his land use case, but I think we need
20 more understanding.

21 MR. GLASGOW: Can we have two minutes so I
22 can talk to my client and confirm precisely where we
23 want to be in light of the discussion?

24 COMMISSIONER PARSONS: Maybe three.

25 MR. GLASGOW: Great.

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1 VICE CHAIRPERSON HOOD: We're going to
2 take a two-minute break.

3 (Whereupon, the foregoing matter went off
4 the record at 7:06 p.m. and went back on the record at
5 7:10 p.m.)

6 VICE CHAIRPERSON HOOD: We're now back on
7 the record.

8 MR. GLASGOW: For the record my name is
9 Norman M. Glasgow, Junior, of the law firm of Holland
10 & Knight. And here with me is Mr. Michael Darvey and
11 Mr. Bill Stein. What we think, in light of what we
12 have heard today, is if we have a short postponement
13 to a date certain to see how this transpires, that
14 that may be in the best interest of everybody in
15 expediting the case in the long term.

16 We also do not believe that the ownership
17 interest, since we have a long-term lease on this
18 property, and I don't want to get into all the
19 details. We have 60-some years left on a lease for
20 the space that is a small part of our entire project
21 there, which is what Watergate East has the underlying
22 fee to, and we pay \$1.00 a month for the next 60-some
23 years. So our view is that irrespective of what ends
24 up happening with this ownership interest, if the
25 commission deemed that it would -- at the end of the

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1 day that it were to approve this case, it could
2 approve the case for the term of our ground lease,
3 which is 60-some years out. So we don't think that
4 that's a show-stopper here in any sense of the word.
5 And I just wanted to get that on the record because
6 there had been something on the record stated about
7 what the ownership is of a few of the parking spaces,
8 and a few of the facilities below grade connected with
9 this. But we are amenable to a short postponement of
10 this to try to resolve what Watergate East's position
11 is.

12 VICE CHAIRPERSON HOOD: Okay.

13 COMMISSIONER PARSONS: We need to define
14 short.

15 MR. GLASGOW: Yes, we need to define
16 short. And then we wanted to get into, just briefly
17 into the record, that of the shares voting for the
18 sale were 33,428 shares of 73,837, which is 45 percent
19 of the shares. And then against the sale were 28,535
20 shares of the 73,837 that are eligible to vote, which
21 is 38 and one-half percent. And so the not voting
22 shares were 16 percent of the total. So this was very
23 widely publicized, and there was a great deal of
24 participation within the Watergate. You've got almost
25 85 percent of the shares voting.

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1 And so in summary, 54 percent of those
2 voting supported, and 46 percent were opposed to the
3 sale. And that gets into all the litigation. And
4 we'll see what the court has to say about whether that
5 majority vote controls or it doesn't, and what type of
6 majority has to. But that's not a lawsuit that I'm
7 handling, and I don't have anything to do with, and
8 I'm not licensed to practice in Delaware. They'll do
9 what they do.

10 COMMISSIONER PARSONS: As you said in your
11 objection earlier, this is a land use matter. So
12 we'll get back to that.

13 MR. GLASGOW: Yes. Right. So we'd like
14 to discuss --

15 COMMISSIONER PARSONS: So they're
16 indicating a month. Is that a short postponement?

17 MR. GLASGOW: We would like to have a two-
18 week postponement.

19 COMMISSIONER PARSONS: That would almost
20 require them to give notice tonight.

21 MR. GLASGOW: They would need to give
22 notice within the next couple days for their 10-day
23 notice. I think that would give them between Friday,
24 Saturday, Sunday, they could get their notice out on
25 Monday and make their 10 days. They could get the

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1 notice out tomorrow.

2 VICE CHAIRPERSON HOOD: Let me ask this,
3 because we do have an automatic party and that's the
4 ANC. And thank you, Mr. Glasgow, I think we're fine.
5 I think we have enough information to proceed.

6 MR. GLASGOW: Thank you.

7 VICE CHAIRPERSON HOOD: I would just ask
8 the ANC, since they are the only party as of yet, do
9 they have any issue with us postponing this for -- I
10 know we said two weeks, but I'm inclined to go
11 further.

12 MS. MILLER: My name is Dorothy Miller and
13 I'm chair of ANC-2A. And it seems to me in two weeks
14 you're going to have problems for the Zoning
15 Commission that are of much greater concern to us even
16 than this. Now this is of concern, but a two-week
17 postponement would really bottleneck what's going on
18 in Foggy Bottom.

19 VICE CHAIRPERSON HOOD: I'm almost
20 reluctant to ask how, but.

21 (Laughter.)

22 VICE CHAIRPERSON HOOD: As a matter of
23 fact, no I won't ask.

24 MS. MILLER: Because the Zoning Commission
25 meets on the ninth. And the discussion is the campus

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1 plan. Yes.

2 COMMISSIONER PARSONS: What campus would
3 that be?

4 (Laughter.)

5 MS. MILLER: The only one in town that
6 ever gets mentioned by me.

7 VICE CHAIRPERSON HOOD: Okay.

8 MS. MILLER: It's an honorable place.

9 VICE CHAIRPERSON HOOD: I will take that
10 as -- I understand your concern, but you really don't
11 have a definite, definite problem if we postpone.

12 MS. MILLER: No, if you postpone it, go
13 ahead. I mean, you know, come on. What's one more
14 problem in Foggy Bottom?

15 VICE CHAIRPERSON HOOD: Thank you, Ms.
16 Miller. Commissioners, we have heard the issues on
17 the table.

18 MR. AGUGLIA: Sir, may I be heard please?

19 VICE CHAIRPERSON HOOD: Who are you
20 representing.

21 MR. AGUGLIA: My name is Richard Aguglia,
22 1900 K Street, Northwest, representing Watergate West,
23 Inc. Before you make your decision on whether or not
24 to continue the case, I would ask you to recognize
25 Watergate West, Inc., as a party in opposition. It is

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1 one of the three co-ops within the complex. The board
2 of directors voted unanimously 8 - 0 with one person
3 absent to oppose.

4 So I would just like to have that on the
5 table now so we could be qualified, recognized as a
6 party in opposition and given party status so we can
7 prepare our case accordingly. We do not have any of
8 the problems of Mr. Kass with Watergate East. We take
9 no position on whether you desire to continue this or
10 not. We are ready to go forward if you are. We take
11 no position on the continuance.

12 VICE CHAIRPERSON HOOD: Mister Aguglia, I
13 haven't heard from my colleagues, but I would not be
14 in favor of -- because there are a lot of people who
15 want to know whether they are going to be a party or
16 not, including East, Watergate East. But I would not
17 want to single out -- were you South?

18 MR. AGUGLIA: West.

19 VICE CHAIRPERSON HOOD: West. You know
20 I'm mixed up, East, South, West. I would not want to
21 take up one and not do the others. In all fairness,
22 we need to do it all at the same time and in order.
23 So that's ? Colleagues? I think if that's your issue,
24 I've ruled on it. I've ruled on that already.

25 MR. AGUGLIA: Thank you.

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1 VICE CHAIRPERSON HOOD: Unless my
2 colleagues differ?

3 COMMISSIONER PARSONS: Well, we haven't
4 decided whether we're going to deal with party status
5 tonight or not. I mean.

6 VICE CHAIRPERSON HOOD: That's what I
7 mean. That's my point. I'd rather do it all at once.

8 Well, let me hear from somebody. Let's open it up
9 for discussion. Party status tonight?

10 MR. GLASGOW: We have no objection to
11 that, Mr. Chairman, if we want to get the party status
12 thing out of the way tonight and postpone the
13 presentation of the cases in chief. I mean we're all
14 here.

15 COMMISSIONER PARSONS: All right, let's do
16 that.

17 VICE CHAIRPERSON HOOD: All right, let's
18 do it.

19 MR. AGUGLIA: Thank you. All right, Mr.
20 Glasgow has no objections.

21 VICE CHAIRPERSON HOOD: Mister Hildebrand?

22 COMMISSIONER HILDEBRAND: Mister Glasgow,
23 can I ask that if there have been any changes in your
24 summary documents, that you submit those in the
25 intervening time between now and the next meeting.

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1 Because there seems to be a question in my mind about
2 exactly how many units we're talking about. I've
3 heard different numbers, and I just would like to know
4 for sure what's on the table at this moment in time.

5 MR. GLASGOW: Yes. We will file anything
6 that's changed from the last documents that the
7 commission has in the time between now and the hearing
8 date.

9 COMMISSIONER HILDEBRAND: Okay. With time
10 for us to have a chance to review them, please.

11 MR. GLASGOW: Right. I assume staff will
12 give us a time we need to get them in. Yes, sir.

13 VICE CHAIRPERSON HOOD: I ask everyone to
14 bear with us for a few minutes, please. I'm going to
15 ask that we take a five-minute break. I would like to
16 bring the chair up to speed in executive session so
17 she can take over. Thank you.

18 (Whereupon, the foregoing matter went off
19 the record at 7:19 p.m. and went back on the record at
20 7:30 p.m.)

21 VICE CHAIRPERSON HOOD: We're now going to
22 reconvene, and at this point in time it's my pleasure
23 to turn it over to Chairperson Mitten.

24 CHAIRPERSON MITTEN: All right. The date
25 that we could organize ourselves for a postponement

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1 would be the first of March. Mister Glasgow, can you
2 -- I know that's not the preferred date, but that's
3 the date that we would be available to take this up
4 again on the postponement.

5 MR. GLASGOW: All right. If that's the
6 date, that's the date.

7 CHAIRPERSON MITTEN: Okay.

8 MR. GLASGOW: We really did want to have
9 an earlier date than that.

10 CHAIRPERSON MITTEN: And we tried. We
11 tried to organize our calendars and get you an earlier
12 date, and we just can't do it with the schedule that
13 the commission has.

14 MR. GLASGOW: All right. I guess then
15 what we would want to make sure is that the time
16 limits are set so that we could finish in one hearing.

17 CHAIRPERSON MITTEN: We can do that. We
18 also have the fourth blocked on our calendars for a
19 continuation date, which would be that Thursday, you
20 know in the event.

21 MR. GLASGOW: That same week.

22 CHAIRPERSON MITTEN: Yes, the same week.

23 MR. GLASGOW: All right. Thank you.

24 CHAIRPERSON MITTEN: Okay. And at that
25 point in time, the evening of the first of March, we

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1 would take up the request for party status. And if
2 anyone wanted to change or withdraw by that time we
3 would certainly entertain that.

4 MR. GLASGOW: I guess we were thinking
5 that if we did party status tonight and got that out
6 of the way, which I don't think is going to be very
7 lengthy because I know for the groups that have asked
8 for party status from opposition, I've already told
9 both of them I don't plan on opposing any of those.
10 And I think that we can get through party status
11 tonight pretty quickly.

12 CHAIRPERSON MITTEN: I think we can do it
13 quickly, and I think our preference is to do it on the
14 first of March.

15 MR. GLASGOW: Okay.

16 CHAIRPERSON MITTEN: Thank you. All
17 right, so we'll reconvene this hearing the first of
18 March 6:30 in this room, and it's nice to see all of
19 you out tonight, and hope you enjoy the rest of your
20 evening. We're now adjourned.

21 (Whereupon, the foregoing matter went off
22 the record at 7:32 p.m.)
23
24

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